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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,940	02/10/2004	Toerless Eckert	CISCO-8252	4233
28661	7590	05/21/2008		
LEWIS AND ROCA, LLP 1663 Hwy 395, Suite 201 Minden, NV 89423				
EXAMINER				
POLLACK, MELVIN H				
ART UNIT		PAPER NUMBER		
2145				
MAIL DATE		DELIVERY MODE		
05/21/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/776,940

**Applicant(s)**

ECKERT, TOERLESS

**Examiner**

MELVIN H. POLLACK

**Art Unit**

2145

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-28.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Jason D Cardone/  
Supervisory Patent Examiner, Art Unit 2145

/M. H. P./  
Examiner, Art Unit 2145  
15 May 2008

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are mere recitations of the prior arguments with no new evidence as to its validity. Therefore, the responses raised in the final action remain valid as the basis of rejection. Further refinements will be stated in response to an RCE or Notice of Appeal. Stated here are a few refinements to the particular spins of the old arguments.

In regards to the issue of incompatible request types, one cannot confuse hindsight reasoning with the discovery of an inherent property, even presuming that Bou-Diab did not recognize and expressly disclose the inherent property.

In regards to the issue of Bou-Diab's particular L2 switch, the repetition of the particulars of the L2 switch is considered by the examiner as potentially triggering prosecution history estoppel limiting the embodiments of the L2 switch as consisting of the description in the remarks with no additions, deletions or modifications of the elements. Assuming this to be true, only a claim that particularly specifies "consisting of" may block the usage of more advanced switches. The applicant has continuously failed to show how the functionality as claimed differs from the functionality of the prior art; the addition of other functions in the prior art is insufficient.

The applicant claims that neither Yoneda nor Bou-Diab teaches segregation by request, yet does not mention Yoneda at all, despite the examiner clearly and empathetically relying on that art. The examiner does not rely on Bou-Diab for address segregation, and has never relied on Bou-Diab for address segregation. And given that the alleged lack of address segregation does not go to the issue of analogousness or motivation to combine, the examiner does not at this time care whether Bou-Diab teaches address segregation. If the applicant would like to address the issue of whether Yoneda teaches address segregation, the examiner would be happy to respond to specific arguments, including discussion of specific phrases. But the examiner will not argue about whether Bou-Diab teaches address segregation because he is not in the habit of arguing for philosophy's sake.

As for the issue of analogousness or motivation to combine, the examiner maintains the original responses, and notes that applicant has not provided any further arguments, or responded to the examiner's responses. The examiner will note, however, that applicant seems to be misconstruing the requirements for the establishment of a prima facie argument.